

ALAN KORN, SBN 167933  
 LAW OFFICE OF ALAN KORN  
 1840 Woolsey Street  
 Berkeley, California 94703  
 Ph. (510) 548-7300  
 Fax: (510) 540-4821

Attorney for Plaintiffs  
 Penelope Houston, James Wilsey,  
 Daniel O'Brien and Greg Ingraham

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 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ADR

C10-01881

PVT

PENELOPE HOUSTON, an individual,  
 GREG INGRAHAM, an individual,  
 JAMES WILSEY, an individual, and  
 DANIEL O'BRIEN, an individual,

Plaintiffs,

v.

DAVID FERGUSON, an individual dba CD  
 PRESENTS, BURIED TREASURE MUSIC  
 and ANARCHY ANTHEMS; ANTHEM  
 MUSIC AND MEDIA FUND, LLC, a  
 Delaware Limited Liability Company dba FIGS  
 D. MUSIC, THE BICYCLE MUSIC  
 COMPANY, an entity of unknown  
 origin; NBC UNIVERSAL, INC., a Delaware  
 Corporation; and Film 44, INC., a California  
 Corporation,

Defendants.

) CASE No.  
 )  
 ) COMPLAINT FOR COPYRIGHT  
 ) INFRINGEMENT, DECLARATORY  
 ) JUDGMENT, BREACH OF  
 ) CONTRACT, BREACH OF  
 ) COVENANT OF GOOD FAITH AND  
 ) FAIR DEALING, FRAUD,  
 ) FRAUDULENT INDUCEMENT OF  
 ) CONTRACT, CONVERSION,  
 ) ACCOUNTING, CONSTRUCTIVE  
 ) TRUST and INJUNCTIVE RELIEF

) (17 U.S.C. §101 et seq.)

) DEMAND FOR JURY TRIAL

1 Plaintiffs Penelope Houston, James Wilsey, Daniel O'Brien and Greg Ingraham.  
 2 ("Plaintiffs") by their Attorney, for their Complaint against Defendants listed above, allege as  
 3 follows:

#### 4 I. NATURE OF THE ACTION

5 1. This action for copyright infringement and declaratory relief is brought by  
 6 Plaintiffs pursuant to the Copyright Act (17 U.S.C. Sections 101, et seq.) and this action for  
 7 breach of contract, breach of fiduciary duty, fraud, fraudulent inducement of contract, conversion  
 8 and related claims is brought pursuant to other common and statutory law set forth.

#### 9 II. PARTIES TO THE ACTION

10 2. Plaintiff Penelope Houston ("Houston") is an individual residing within the State  
 11 of California. Plaintiff Houston is an original member and vocalist of the late-1970s San  
 12 Francisco punk rock band The Avengers, and co-author and joint copyright owner of numerous  
 13 Avengers sound recordings and musical compositions, including *The American In Me* (aka *The*  
 14 *Amerikan in Me*), *Corpus Christi*, *Uh Oh*, *White Nigger*, *Open Your Eyes*, *No Martyr*,  
 15 *Desperation*, *Thin White Line*, *F\*\*k You*, *Second to None*, *Cheap Tragedies* and others (the  
 16 "Masters" and "Compositions") which Plaintiffs allege were used without permission by the  
 17 Defendants herein. Ms. Houston is, and at all relevant times was, a domiciliary of the United  
 18 States.

19 3. Plaintiff Greg Ingraham ("Ingraham") is an individual residing within the State of  
 20 California. Plaintiff Ingraham is also an original member and guitarist of the late-1970s San  
 21 Francisco punk rock band The Avengers, and co-author and joint copyright owner of the Masters  
 22 and Compositions (excluding *Corpus Christi*) which Plaintiffs allege were used without  
 23 permission by the Defendants herein. Mr. Ingraham is, and at all relevant times was, a  
 24 domiciliary of the United States.

25 4. Plaintiff James Wilsey ("Wilsey") is an individual residing within the State of  
 California. Plaintiff Wilsey is also an original member and bass guitarist of the late-1970s San

1 Francisco punk rock band The Avengers, and co-author and joint copyright owner of the Masters  
2 and Compositions which Plaintiffs allege were used without permission by Defendants herein.  
3 Mr. Wilsey is, and at all relevant times was, a domiciliary of the United States .

4 5. Plaintiff Daniel O'Brien ("O'Brien") is an individual residing within the country  
5 of Sweden. Plaintiff O'Brien is also an original member and drummer of the late-1970s San  
6 Francisco punk rock band The Avengers, and co-author and joint copyright owner of the Masters  
7 and Compositions which Plaintiffs allege were used without permission by Defendants herein.  
8 Mr. O'Brien, though currently a domiciliary of Sweden, is a national of the United States who  
9 has previously conducted substantial business in the San Francisco Bay Area as a musician,  
10 performer, composer and recording artist under the professional pseudonym "Danny Furious."

11 6. Plaintiffs are informed and believe that Defendant David Ferguson ("Ferguson")  
12 is an individual who at various times has conducted business under the fictitious business names  
13 Go! Records, CD Presents, Ltd., Buried Treasure Music and Anarchy Anthems. On information  
14 and belief, Defendant Ferguson is, and at all times herein mentioned was, doing business within  
15 the State of California as a record company and music publishing company engaged in the  
16 business of reproducing and distributing, and licensing the reproduction and distribution of,  
17 recordings and compositions (including the Masters and Compositions herein) and collecting  
18 income arising thereby.

19 7. Plaintiffs are informed and believe that Defendant Anthem Music and Media  
20 Fund, LLC ("Anthem Music") is a limited liability company existing under the laws of the State  
21 of Delaware which at various times has conducting business under the fictitious business name  
22 Figs D. Music and is engaged in the business of administering and licensing of rights in and to  
23 master recordings and musical compositions (including the Masters and Compositions herein)  
24 and collecting income arising thereby.

25 8. Plaintiffs are informed and believe that Defendant Bicycle Music Company  
("Bicycle Music") is an entity of unknown origin existing under the laws of the State of

1 California that is engaged in the business of administering and licensing of rights in and to  
2 master recordings and musical compositions (including the Masters and Compositions herein)  
3 and collecting income arising thereby.

4 9. Plaintiffs are informed and believe that Defendant Film 44 ("Film 44") is a  
5 corporation existing under the laws of the State of California engaged in the business of film and  
6 video production, including production of the October 5, 2009 episode of the NBC television  
7 program "Trauma" entitled *All's Fair* that makes unauthorized use of Plaintiffs' Master and  
8 Composition entitled *The American In Me*.

9 10. Plaintiffs are informed and believe that Defendant NBC Universal, Inc. ("NBC")  
10 is a corporation existing under the laws of the State of New York that is engaged in the business  
11 of broadcasting network television programs, including the broadcast and re-broadcast of the  
12 October 5, 2009 episode of the NBC television program "Trauma" entitled *All's Fair* that makes  
13 unauthorized use of Plaintiffs' Master and Composition entitled *The American In Me*.

### 14 III. JURISDICTION AND VENUE

15 11. This Court has jurisdiction of the subject matter for this claim under the  
16 provisions of 28 U.S.C. §1338(a), because this action arises under an Act of Congress relating to  
17 Copyrights, the Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541 *et seq.* 17 U.S.C. 101 *et*  
18 *seq.*

19 12. This Court has jurisdiction of the subject matter of this claim under the provisions  
20 of 28 U.S.C. §1331, because the action arises under the laws of the United States, specifically the  
21 above-cited Copyright Act of 1976.

22 13. Venue is properly laid in the District Court for the Northern District of California  
23 pursuant to 28 U.S.C. § 1391(b), and § 1391(c), since, *inter alia*, the causes of action asserted  
24 arose from or are connected with purposeful acts committed by the individual Defendants in this  
25 District, and the corporate and individual Defendants named herein are each doing business in  
this District.

#### IV. FACTUAL ALLEGATIONS

##### A. The Avengers Studio Recordings and Compositions

14. Plaintiffs Houston, Ingraham, Wilsey and O'Brien are original members of The Avengers whose brief career from 1977 to June 1979 encompassed the birth of west coast punk and included a legendary January 1978 performance opening for the Sex Pistols at Winterland Auditorium.

15. Despite their brief existence, The Avengers influenced a generation of rock musicians, including such legendary artists as Nirvana, Pearl Jam and Green Day, and left behind a legacy of approximately twenty-one (21) studio recordings and twenty-seven (27) musical compositions that are regarded as some of the best punk rock anthems to emerge from the late 1970s West Coast punk scene.

16. On or about November 27, 1977, Plaintiffs entered into a recording agreement with Dangerhouse Records (the "Dangerhouse Agreement") and subsequently recorded and released their first single, a three-song vinyl 7" EP comprised of the original Compositions *We Are The One*, *Car Crash* and *I Believe In Me* (the "Dangerhouse EP"). All rights in and to the above sound recordings (including copyright) are retained by Dangerhouse Records pursuant to the Dangerhouse Agreement.

17. The Compositions *We Are The One*, *Car Crash* and *I Believe In Me* constitute copyrightable subject matter under the laws of the United States, and Plaintiffs' registration of said Compositions is pending with the United States Copyright Office pursuant to Registration Application No. 1-42514945 (*Car Crash*), 1-42514902 (*I Believe in Me*) and 1-42328321 (*We Are The One*) which were submitted to the Register of Copyrights on or about December 13, 2008.

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18. In late 1978 and early 1979 Plaintiffs recorded the Masters *The American In Me*, *Uh Oh*, *White Nigger* and *Corpus Christi*<sup>1</sup> (produced by Sex Pistols' guitarist Steve Jones and engineered by recording artist Geza X) which were later released pursuant to a written agreement with White Noise Records dated July 30, 1979 (the "White Noise Agreement"). Copyrights in the above Masters were originally owned by White Noise Records pursuant to the White Noise Agreement. Said Masters constitute copyrightable subject matter under the laws of the United States, and were registered with the United States Copyright Office pursuant to Registration Certificate No. SR 14-773, issued by the Register of Copyrights on January 14, 1980, a true and correct copy of which is attached as **Exhibit A**. On or about November 30, 2008, White Noise Records assigned all rights in the Masters to Plaintiffs Houston, Ingraham, Wilsey and O'Brien pursuant to an Assignment of Copyright, a true and correct copy of which is attached hereto as **Exhibit B** and incorporated herein by reference.

19. The Compositions *The American In Me*, *Corpus Christi*, *Uh Oh* and *White Nigger* (the "Compositions") constitute copyrightable subject matter under the laws of the United States, and were registered by Plaintiffs with the Copyright Office on December 10, 1979 pursuant to United States Copyright Registration certificate No. PA 58-030 (*White Nigger*), No. PA 58-031 (*The American In Me*), No. PA 58-032 (*Corpus Christi*) and No. 58-033 (*Uh Oh (A Mystery)*). True and correct copies of Plaintiffs' copyright registrations for the above Compositions are attached hereto as **Exhibit C** and incorporated herein by this reference.

20. The Masters and Compositions *The American In Me*, *Corpus Christi*, *Uh Oh* and *White Nigger* were commercially released by White Noise Records in approximately October 1979 on a critically acclaimed 12" vinyl EP titled "The Avengers" (the "White Noise EP").

21. The Avengers disbanded in approximately June 1979 prior to the release of the White Noise EP. Following the breakup, all four Plaintiffs' ceased to perform together as a band

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<sup>1</sup> Plaintiff Ingraham quit the band in approximately January 1979 and was replaced by guitarist Brad Kent on the sound recording/composition *Corpus Christi*.



1 and Plaintiffs had no substantive communication with one another until the late 1990s. Plaintiff  
2 Houston immediately pursued a solo career in Los Angeles, California and London, England,  
3 and Plaintiff Wilsey immediately joined the Bay Area band Silvertone and went on to achieve  
4 substantial acclaim as guitarist for popular recording artist Chris Isaak.

5 22. In approximately August 1982, three (3) years after The Avengers disbanded,  
6 Defendant Ferguson tracked down Plaintiff O'Brien to discuss the release of a compilation  
7 album of Avengers material comprised of the Dangerhouse EP, the White Noise EP and  
8 additional unreleased Avengers recordings. On August 11, 1982 Plaintiff O'Brien entered into a  
9 non-exclusive license permitting the record label Go! Records to release an Avengers  
10 compilation album in the form of Phonorecords only (the "First O'Brien License"). The First  
11 O'Brien License promised the Avengers would receive a royalty based on six percent (6%) of  
12 actual retail price with accounting statements rendered, and royalties paid, semi-annually.  
13 Paragraph 7(d) of the First O'Brien License additionally required Artist's consent prior to any  
14 modifications, alterations or changes to the Masters, including the addition of sound effects.

15 23. On or about August 11, 1982 Plaintiffs Wilsey and O'Brien entered into a  
16 separate non-exclusive license agreement with Go! Records permitting the limited use of one (1)  
17 unnamed song in a vinyl compilation album consisting of various Bay Area punk bands entitled  
18 *Rat Music for Rat People* (hereafter the "*Rat Music License*" and the "*Rat Music Compilation*").

19 24. In or about Fall 1982, Defendant Ferguson issued the *Rat Music Compilation*  
20 featuring the recording *Cheap Tragedies* by The Avengers.

21 25. The Master *Cheap Tragedies* constitutes copyrightable subject matter under the  
22 laws of the United States, and registration of said Master by Plaintiffs is pending with the United  
23 States Copyright Office pursuant to Registration Application No. SR 1-372874068 submitted to  
24 the Register of Copyrights on or about April 10, 2010.  
25

1           26.     The Composition *Cheap Tragedies* constitutes copyrightable subject matter under  
2 the laws of the United States, and registration of said Composition by Plaintiffs is pending with  
3 the United States Copyright Office pursuant to Registration Application No. PA 1-372696972  
4 submitted to the Register of Copyrights on or about April 10, 2010.

5           27.     On or about January 16, 1983, Plaintiff Wilsey signed a non-exclusive license  
6 agreement with Go! Records permitting the release of eleven (11) Masters on an Avengers  
7 compilation album in the form of Phonorecords only (the "First Wilsey License"). The First  
8 Wilsey License provided that the Avengers would receive a royalty based on six percent (6%) of  
9 actual retail price, with accounting statements rendered, and royalties paid, semi-annually.  
10 Paragraph 7(d) of the First Wilsey License additionally required Artist's consent prior to any  
11 modifications, alterations or changes to the Masters, including the addition of sound effects.

12           28.     On or about January 21, 1983, Go! Records also entered into a separate Producer  
13 Agreement with Plaintiff Wilsey concerning his production services on an Avengers compilation  
14 album (the "Producer Agreement"). In exchange for his producer services, the Producer  
15 Agreement promised Wilsey an additional royalty of one percent (1%) of actual retail price on  
16 albums sold with accounting statements rendered, and royalties paid, semi-annually.

17           29.     In approximately Spring 1983, Go! Records issued a fourteen (14) track vinyl  
18 compilation album entitled *The Avengers* (referred to herein by its unofficial title the "*Pink*  
19 *Album*") consisting of the three Dangerhouse EP Masters, the four White Noise EP Masters and  
20 the seven (7) additional previously unreleased recordings: *Open Your Eyes*, *No Martyr*,  
21 *Desperation*, *Thin White Line*, *Second to None*, *F\*\*k You* and a cover version of the Rolling  
22 Stones song *Paint It Black* (collectively the "*Pink Album Masters*").

23           30.     The Masters *Open Your Eyes*, *No Martyr*, *Desperation*, *Thin White Line*, *F\*\*k*  
24 *You* and *Paint It Black* are owned by Plaintiffs and constitute copyrightable subject matter under  
25 the laws of the United States. Registration of said Masters is pending with the United States



1 Copyright Office pursuant to Registration Application No. SR 1-142515009 submitted to the  
2 Register of Copyrights by Plaintiffs on or about December 19, 2008.

3 31. On information and belief, Plaintiffs allege that David Ferguson and/or his  
4 company CD Presents, Ltd. acquired Go! Records pursuant to a court order issued on or about  
5 June 21, 1983 in the Superior Court of California for the City and County of San Francisco.

6 32. On June 26, 1983, following commercial release of the *Pink Album* and the  
7 acquisition of Go! Records, Ferguson's company CD Presents, Ltd. entered into new non-  
8 exclusive license agreements with Plaintiff Wilsey and Plaintiff O'Brien permitting the release of  
9 fourteen (14) Masters comprising the *Pink Album* in the form of Phonorecords only (the "Second  
10 Wilsey License" and "Second O'Brien License"). The Second Wilsey License and Second  
11 O'Brien License again provided that The Avengers would receive a royalty based on six percent  
12 (6%) of actual retail price, with accounting statements and royalties to be provided semi-  
13 annually. Paragraph 7(d) of both licenses again required Artist's consent prior to any  
14 modifications, alterations or changes to the Masters, including the addition of sound effects.

15 33. On or about August 24, 1983 following release of the *Pink Album*, Ferguson's  
16 company CD Presents, Ltd. located Plaintiff Ingraham and obtained Ingraham's signature on a  
17 separate non-exclusive license agreement concerning the *Pink Album* Masters (the "Ingraham  
18 License"). Under the Ingraham License, the fourteen (14) *Pink Album* Masters were to be  
19 released in the form of Phonorecords only and Plaintiffs were to receive a royalty based on six  
20 percent (6%) of actual retail price, with accounting statements and royalties to be provided on a  
21 semi-annual basis. Paragraph 7(d) of the Ingraham License further required Artist's consent  
22 prior to any modifications, alterations or changes to the Masters, including the addition of sound  
23 effects.

24 34. On October 19, 1983 and January 24, 1984 Plaintiff Houston, who was no longer  
25 in contact with other Plaintiffs, wrote Defendant Ferguson from London, England demanding

1 that he produce copies of contracts or other documents authorizing his release of the *Pink Album*  
2 and *Rat Music* Compilation.

3 35. On or about March 21, 1984, Plaintiff Ingraham entered into a separate co-  
4 publishing agreement with Ferguson's company CD Presents, Ltd. (the "Ingraham Co-Publishing  
5 Agreement") whereby Ingraham and CD Presents, Ltd. agreed to jointly own an undivided fifty  
6 percent (50%) copyright interest in Plaintiff Ingraham's 25% interest in fourteen (14) Avengers  
7 compositions: *We Are The One*, *Car Crash*, *I Believe In Me*, *The American In Me*, *Corpus*  
8 *Christi*, *Uh Oh*, *White Nigger*, *Open Your Eyes*, *Desperation*, *Thin White Line*, *No Martyr*, *F\*\*k*  
9 *You*, *Cheap Tragedies* and *Second to None*. In consideration for the above grant of rights,  
10 Ferguson's company agreed to administer Ingraham's interest in the Compositions and pay  
11 Ingraham fifty percent (50%) of gross receipts on a semi-annual basis.

12 36. After receiving no response to her 1983 and 1984 registered letters to Ferguson,  
13 Plaintiff Houston later tracked down Ferguson upon her return to San Francisco to express her  
14 concerns about his release of the *Pink Album* and *Rat Music* Compilation.

15 37. On or about January 7, 1985, after learning that Plaintiffs Ingraham, Wilsey and  
16 O'Brien had signed License Agreements with CD Presents, Ltd. authorizing distribution of the  
17 *Pink Album*, Plaintiff Houston signed a separate non-exclusive license with CD Presents, Ltd.  
18 concerning the *Pink Album* Masters (the "Houston License"). The Houston License similarly  
19 provided that the fourteen (14) *Pink Album* Masters would be released in the form of  
20 Phonorecords only, and that Plaintiffs would receive a royalty based on six percent (6%) of  
21 actual retail price, with accounting statements and royalties to be delivered semi-annually.  
22 Paragraph 7(d) of the Houston License additionally required Artist's consent prior to any  
23 modifications, alterations or changes to the Masters, including the addition of sound effects.

24 38. On or about March 5, 1985, Plaintiff Houston also entered into a separate music  
25 co-publishing agreement with Ferguson's company CD Presents, Ltd. (the "Houston Co-  
Publishing Agreement") whereby Houston and CD Presents, Ltd. agreed to jointly own an

undivided fifty percent (50%) copyright interest in Plaintiff Houston's 25% interest in fourteen (14) Avengers Compositions: *We Are The One*, *Car Crash*, *I Believe In Me*, *The American In Me*, *Corpus Christi*, *Uh Oh*, *White Nigger*, *Open Your Eyes*, *Desperation*, *Thin White Line*, *No Martyr*, *F\*\*k You*, *Cheap Tragedies* and *Second to None*. In consideration for the above grant of rights, Ferguson's company agreed to administer Houston's interest in the Compositions and pay Houston fifty percent (50%) of gross receipts on a semi-annual basis.

39. At no time have Plaintiffs Wilsey or O'Brien entered into any agreements with Defendant Ferguson, CD Presents, Ltd. or their successors or assigns concerning their respective rights in the Compositions, nor did Plaintiffs Wilsey or O'Brien authorize Plaintiffs Houston or Ingraham to enter into any Publishing Agreements on their behalf. As any transfer of copyright interest, other than one by operation of law, is not valid unless set forth in an instrument of conveyance signed by the owner of the rights conveyed or their duly authorized agent pursuant to 17 U.S.C. Section 204(a), Plaintiffs Wilsey and O'Brien have at all times retained their respective ownership and copyright interests in the fourteen (14) Compositions identified in Paragraphs 35 and 38 herein.

40. From approximately 1982 through the 1990s, Ferguson and his company CD Presents, Ltd. were engaged in the manufacture and sale of the *Pink Album* Masters on vinyl, cassette and compact disc. Despite Ferguson's subsequent claims that the *Pink Album* sold more than 100,000 copies, Plaintiffs received only a few hundred dollars in advances upon signing their Licensing Agreements. After March 1985 Ferguson ceased providing Plaintiffs with copies of accounting statements and royalties, despite his ongoing contractual obligation to do so.

41. On or about March 23, 1993 prior to commencing litigation against Frontier Records, Plaintiff Houston and others concerning an alleged violation of "exclusive" rights in the Masters *We Are The One* and *Car Crash*.<sup>2</sup> CD Presents, Ltd. assigned its rights and obligations

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<sup>2</sup> See Buried Treasure, Inc. v. Frontier Records, 1994 U.S. Dist. LEXIS 10432 (N.D. Cal. 1994) (finding summary judgment in favor of Frontier Records and against Buried Treasure, Inc.).

1 pursuant to the License Agreements, the Producer Agreement, the Houston Co-Publishing  
2 Agreement and Ingraham Co-Publishing Agreements to Buried Treasure, Inc., a Nevada  
3 corporation allegedly owned by Ferguson's mother. A true and correct copy of the "Assignment  
4 of Copyrights" between CD Presents, Ltd. and Buried Treasure, Inc. is attached hereto as  
5 **Exhibit D**, and incorporated herein by this reference.

6 42. On information and belief, Plaintiffs allege that at some point after the above  
7 transfer of rights, Ferguson's corporation CD Presents, Ltd. was suspended by the California  
8 Secretary of State. Attached hereto as **Exhibit E**, and incorporated herein by reference, is a  
9 printout from the California Secretary of State's website identifying the corporate status of CD  
10 Presents, Ltd. as "Suspended."

11 43. On information and belief, Plaintiffs allege that Defendant Ferguson was later  
12 appointed President, Secretary and Treasurer of Buried Treasure, Inc., and that at some time  
13 prior to the infringing acts alleged herein, the corporate charter of Buried Treasure, Inc. was  
14 permanently revoked by the Nevada Secretary of State. Attached hereto as **Exhibit F**, and  
15 incorporated herein by reference, is a printout from the Nevada Secretary of State's website  
16 identifying David Ferguson as "Treasurer," "Secretary" and "President" of Buried Treasure, Inc.,  
17 and identifying the corporate status of Buried Treasure, Inc. as "Permanently Revoked."

18 44. Plaintiffs allege on information and belief that in or about the mid-1990s after the  
19 loss of its lawsuit against Frontier Records, the corporation Buried Treasure, Inc. somehow  
20 transferred to Defendant Ferguson the rights and obligations it had previously acquired from CD  
21 Presents, Ltd. in the License Agreements, the Producer Agreement, the Houston Co-Publishing  
22 Agreement and the Ingraham Co-Publishing Agreement.

23 45. In or about May 1999, Plaintiff Houston registered approximately twelve (12)  
24 Compositions with BMI after discovering that Defendant Ferguson, CD Presents, Inc. and  
25 Buried Treasure, Inc. had failed to register the Compositions with any performance rights  
societies despite their obligations under the Houston Co-Publishing Agreement and Ingraham

1 Co-Publishing Agreement, thereby preventing Houston and Ingraham from earning performing  
2 rights income from the Compositions.

3 46. In approximately August 1999 Plaintiffs retained legal counsel to address  
4 Ferguson's ongoing multiple breaches of their respective License Agreements and Co-Publishing  
5 Agreements, including his failure to provide any accounting or compensation (including artist  
6 royalties and publishing income) for prior sales of the *Pink Album*.

7 47. On or about August 5, 1999, counsel for Plaintiffs wrote a letter to CD Presents,  
8 Ltd., Buried Treasure, Inc. and Defendant Ferguson notifying them of Plaintiffs' termination and  
9 cancellation of their "at will" license agreements for the *Pink Album* due to their material breach  
10 in failing to provide accounting statements or pay royalties since 1985. An unsigned copy of the  
11 termination letter that was ultimately delivered to legal counsel for Ferguson (and bearing the  
12 date April 27, 2006, when it was produced to Plaintiffs) is attached hereto as **Exhibit G**, and  
13 incorporated herein by reference.

14 48. Plaintiffs' letter delivered on or about August 5, 1999 also notified Defendant  
15 Ferguson, CD Presents, Ltd. and Buried Treasure, Inc. of Houston and Ingraham's rescission  
16 and termination of their Co-Publishing Agreements based on numerous factors, including  
17 Defendant's negligent or intentional misrepresentation, concealment, fraud, failure register the  
18 Compositions with performance rights societies, and failure to pay royalties to Plaintiffs since  
19 approximately 1985.

20 49. Following receipt of Plaintiffs' termination letter, Defendant Ferguson, CD  
21 Presents, Ltd. and Buried Treasure, Inc. thereafter discontinued any further sale and licensing of  
22 the *Pink Album* Masters and Compositions until approximately 2008 or 2009.

23 50. In approximately 1999 Plaintiffs thereafter licensed an album entitled *The*  
24 *Avengers Died For Your Sins* to Lookout Records containing alternate and live versions of  
25 certain Avengers Compositions, including *The American In Me*, *Open Your Eyes*, *Car Crash*,  
*F\*\*k You*, *Desperation*, *I Believe In Me*, *We Are The One* and *White Nigger*. Said album was

1 openly distributed in the United States and internationally, including over Amazon.com and  
2 other online music retailers.

3 51. On information and belief, Plaintiffs allege Defendant Ferguson was aware of  
4 Plaintiffs' *The Avengers Died For Your Sins* album but made no attempt to collect mechanical  
5 royalties or other publishing income from Lookout Records for said Compositions or otherwise  
6 perform his obligations under the terminated Co-Publishing Agreements.

7 52. In or about 2003 Plaintiffs licensed an album entitled *The Avengers Zero Hour:*  
8 *June 13, 1979* to the Get Back record label which contained live versions of certain Avengers  
9 Compositions, including *Cheap Tragedies*, *Corpus Christi*, *Uh Oh* and *The American In Me*.  
10 Said album was openly distributed in the United States and internationally, including over  
11 Amazon.com and other online music retailers.

12 53. On information and belief, Plaintiffs allege Defendant Ferguson was aware of  
13 Plaintiffs' *The Avengers Zero Hour: June 13, 1979* album but made no attempt to collect  
14 mechanical royalties or other publishing income from Get Back from said Compositions or  
15 otherwise perform his obligations under the terminated Co-Publishing Agreements.

16 54. In approximately 2003, Dangerhouse Records licensed the Master *We Are The*  
17 *One* for use in the Rhino Records compilation entitled "No Thanks! The '70s Punk Rebellion"  
18 without any interference from Defendant Ferguson.

19 55. On information and belief, Plaintiffs allege Defendant Ferguson was aware of the  
20 Rhino Records box set containing Plaintiffs' Composition *We Are The One* but made no attempt  
21 to collect mechanical royalties or other publishing income from Rhino Records until  
22 approximately 2008.

23 56. In approximately 2004 Plaintiffs licensed an album entitled *The American In Me*  
24 to the DBK Works record label containing alternate and live versions of Avengers Compositions,  
25 including *The American In Me*, *We Are The One*, *White Nigger*, *Uh Oh*, *Cheap Tragedies* and



1 *Corpus Christi*. Said album was openly distributed in the United States and internationally.  
2 including over Amazon.com and other online music retailers.

3 57. On information and belief, Plaintiffs allege Defendant Ferguson was aware of  
4 Plaintiffs' *The American In Me* compilation album but made no attempt to collect mechanical  
5 royalties or other publishing income from DBK Works for said Compositions or otherwise  
6 perform his obligations under the terminated Co-Publishing Agreements.

7 58. In approximately 2006 Plaintiffs again asserted their rights in the Masters and  
8 Compositions by manufacturing and distributing a limited edition version of the *Pink Album*  
9 which was sold across the United States and in Europe, including at live Avengers reunion  
10 concerts (featuring Plaintiffs Houston and Ingraham with a new rhythm section), at solo concerts  
11 by Plaintiff Houston and over the internet on Plaintiff Houston's website [www.penelope.net](http://www.penelope.net).

12 59. On or about February 13, 2008 during Plaintiffs' negotiations with third parties  
13 concerning their official reissue of their *Pink Album* Masters, Plaintiffs legal counsel wrote  
14 Ferguson reminding him that the License Agreements and Co-Publishing Agreements were  
15 terminated in August 1999 based on his failure to pay royalties since 1985, and demanding that  
16 Ferguson not interfere with Plaintiffs' pending negotiations concerning the *Pink Album*. A true  
17 and correct copy of Plaintiffs' February 13, 2008 letter is attached hereto as **Exhibit H** and  
18 incorporated herein by reference.

19 60. On or about February 29, 2008 counsel for Ferguson responded by alleging that  
20 the License Agreements and Co-Publishing Agreements were still in effect, despite Plaintiffs  
21 prior termination of said agreements. A true and correct copy of the February 29, 2008 letter  
22 from Ferguson's counsel is attached hereto as **Exhibit I**, and incorporated herein by reference.

23 61. On December 10, 2008, Plaintiffs again notified legal counsel for Defendant  
24 Ferguson that he lacked any right to exploit The Avengers Masters (including the White Noise  
25 EP Masters) based on Plaintiffs' August 1999 termination of their non-exclusive license

1 agreements for non-payment of royalties. A true and correct copy of Plaintiffs' December 10,  
2 2008 letter is attached hereto as **Exhibit J**, and incorporated herein by reference.

3 62. Despite Plaintiffs' repeated demands, in or about 2008 or 2009 Defendant  
4 Ferguson entered into agreements with Anthem Music and/or Bicycle Music granting them the  
5 right to administer rights in and to the Masters and Compositions, in willful disregard of  
6 Plaintiffs' 1999 termination of their respective License Agreements, the Houston Co-Publishing  
7 Agreement and the Ingraham Co-Publishing Agreement.

8 63. Beginning in or about 2008 or 2009, Defendants Ferguson, Anthem Music and  
9 Bicycle Music negotiated and entered into separate agreements with various third parties  
10 permitting the reproduction, distribution and exploitation of the Masters and Compositions, all in  
11 willful and conscious disregard of Plaintiffs' exclusive rights therein. Plaintiffs, on information  
12 and belief, allege that Defendants Ferguson, Anthem Music and Bicycle Music have granted the  
13 following unauthorized uses:

14 (a) Reproduction and distribution of the Master and Composition *The*  
15 *American In Me* in an episode of the NBC television program "Trauma" entitled *All's Fair*  
16 initially broadcast over the NBC network on or about October 5, 2009 and subsequently  
17 rebroadcast and distributed throughout the world, including streaming video on the Internet  
18 website [www.hulu.com](http://www.hulu.com) and digital downloads over the iTunes store and related retail websites.  
19 A true and correct printout from the iTunes store reflecting distribution of the *All's Fair* episode  
20 of the television program "Trauma" containing Plaintiffs' Master and Composition is attached  
21 hereto as **Exhibit K**, and incorporated herein by this reference.

22 (b) Authorizing music distributor Internet Online Distribution Alliance, Inc.  
23 ("IODA") in or about 2009 or 2010 to license a substantially "remixed," "remastered" and  
24 "expanded" version of the *Pink Album*, embodying five (5) additional Avengers recordings not  
25 included in the original License Agreements, to third party digital music retailers including  
iTunes, Amazon.com, eMusic and other online vendors throughout the world. True and correct

1 printouts of webpages documenting the unauthorized sale of Plaintiffs' *Pink Album* Masters are  
2 attached hereto as **Exhibit L** and incorporated herein by reference;

3 (c) Authorizing music distributor IODA in or about 2009 or 2010 to release  
4 an additional album entitled *Tribute to the Avengers* containing cover versions of Plaintiffs'  
5 Compositions to third party digital music retailers, including iTunes, Amazon.com, eMusic and  
6 other online vendors throughout the world. True and correct printouts of webpages documenting  
7 the unauthorized use of Plaintiffs' Compositions on the *Tribute to the Avengers* album are  
8 attached hereto as **Exhibit M** and incorporated herein by reference.

9 (d) Authorizing music distributor IODA in or about 2009 or 2010 to release a  
10 compilation album of west coast punk bands entitled *Rat Music For Rat People. Vol. IV*  
11 containing the Composition *I Believe In Me*. True and correct printouts of webpages  
12 documenting the unauthorized reproduction and distribution of the Master and Composition *I*  
13 *Believe in Me* as part of the above compilations are attached hereto as **Exhibit N** and  
14 incorporated herein by reference;

15 (e) Granting in or about 2008 the right to use the Composition *We Are The*  
16 *One* in the independent motion picture "What We Do Is Secret" and that film's accompanying  
17 soundtrack album. True and correct printouts of webpages documenting the inclusion of the  
18 Composition *We Are The One* in the soundtrack to the film "What We Do Is Secret" are attached  
19 hereto as **Exhibit O** and incorporated herein by reference;

20 (f) Collecting in 2008 approximately \$3,000 in mechanical royalties from  
21 Rhino Records from their sale the box set "No Thanks! The '70s Punk Rebellion" containing the  
22 Composition *We Are The One*.

23 (g) Agreements with Broadcast Music, Inc. ("BMI") authorizing the public  
24 performance of Plaintiffs' Compositions and the collection of performance rights income earned  
25 thereby.

1           64.     At no time following the 1999 termination of the respective License Agreements  
2 and Co-Publishing Agreements did Plaintiffs authorize any of the above acts by Defendants, nor  
3 have Plaintiffs been compensated by Defendants, or any of them, for the above-described uses of  
4 their Masters and Compositions or the collection of income derived from such exploitation.

5                               **FIRST CAUSE OF ACTION**

6                   **Copyright Infringement – *The American in Me* (Master and Composition)**

7                               **(All Defendants)**

8           65.     Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1  
9 through 64 inclusive, and by this reference incorporate the same as though fully set forth herein.

10          66.     On information and belief, Plaintiffs allege that in or about 2009 Defendants  
11 Ferguson, Anthem Music and/or Bicycle Music entered into a license agreement with Film 44  
12 and/or NBC Universal permitting use of the Master and Composition *The American In Me* in an  
13 episode of the television program “Trauma” entitled *All’s Fair* that aired on or about October 5,  
14 2009. Plaintiffs further allege that Defendants Ferguson, Anthem Music and/or Bicycle Music  
15 entered into the licensing agreement willfully and with full knowledge that they had no right to  
16 do so.

17          67.     Defendants failure to secure Plaintiffs’ permission regarding the use of *The*  
18 *American in Me* Master in an episode of the television program “Trauma” violates Plaintiffs’  
19 rights inasmuch as Ferguson never acquired copyright in said Master, and inasmuch as White  
20 Noise Records assigned all rights, including copyright, in the Master to Plaintiffs on or about  
21 November 30, 2008, and Plaintiffs therefore retain the exclusive right under the Copyright Act to  
22 authorize the adaptation, reproduction, performance, distribution and derivative use of said  
23 Master.

24          68.     Defendants’ failure to secure Plaintiffs permission regarding the synchronized use  
25 of *The American in Me* Composition in an episode of the television program “Trauma” also  
violates Plaintiffs’ rights inasmuch as Plaintiffs Wilsey and O’Brien never entered into any

1 publishing or administration agreement with Defendant Ferguson, and inasmuch as Plaintiffs  
2 Houston and Ingraham terminated their respective Co-Publishing Agreements with Ferguson on  
3 or about August 5, 1999, and Plaintiffs therefore retain the exclusive right under the Copyright  
4 Act to authorize the adaptation, reproduction, performance, distribution and derivative use of  
5 said Composition.

6 69. Plaintiffs allege that Defendants Ferguson, Anthem Music and Bicycle Music  
7 engaged in each of the above acts willfully, and with full knowledge that they had no right to do  
8 so.

9 70. Plaintiffs have complied with all statutory requirements and applied to secure  
10 federal statutory copyright for the Compositions under the copyright laws of the United States.  
11 As a direct and proximate result of Defendants' acts and omissions related herein, Plaintiffs have  
12 suffered actual damages and Defendants have profited from the unauthorized use of Plaintiffs'  
13 works in violation of their Copyrights. The exact extent of actual damage suffered by Plaintiffs  
14 and profited by Defendants is as yet not ascertained, as the total nature and extent of all  
15 unauthorized uses of Plaintiff's works by Defendants is presently unknown. Plaintiffs pray leave  
16 to amend this Complaint to set forth additional unauthorized uses of their works by Defendants,  
17 and the exact nature of actual damages suffered and the gross revenues received by Defendants  
18 in connection with such unauthorized uses, in an amount according to proof at trial.

## 19 SECOND CAUSE OF ACTION

### 20 Copyright Infringement (The *Pink Album* Masters and Compositions)

#### 21 (Defendants Ferguson, Anthem Music and Bicycle Music)

22 71. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1  
23 through 70 inclusive, and by this reference incorporate the same as though fully set forth herein.

24 72. Despite termination of their License Agreements with Ferguson in August 1999,  
25 Defendants Ferguson, Anthem Music and/or Bicycle Music in approximately 2009, and in  
blatant disregard of Plaintiffs' rights, entered into agreements with IODA and other third parties



1 concerning the digital distribution of a "remixed," "remastered" and expanded version of  
2 Plaintiffs' *Pink Album* comprised of Plaintiff's Masters, including *Open Your Eyes*, *No Martyr*,  
3 *Desperation*, *Thin White Line*, *Paint It Black*, *The American In Me*, *White Nigger*, *Uh Oh*,  
4 *Second to None* and *F\*\*k You* and five (5) additional recordings not included in the original  
5 License Agreements, including *Cheap Tragedies*, *No Martyr (Alternative Take)*, *Desperation*  
6 *(Alternative Take)*, *Corpus Christi (Alternative Take)* and *Thin White Line (Alternative Take)* via  
7 third party vendors of digital downloads and ringtones, including but not limited to, iTunes,  
8 Amazon.com, eMusic, Limewire, MySpace, 7Digital and others.

9 73. Despite termination of the Houston Co-Publishing Agreement and Ingraham Co-  
10 Publishing Agreement in approximately August 1999, Defendants Ferguson, Anthem Music  
11 and/or Bicycle Music, and in blatant disregard of Plaintiffs' rights, additionally authorized the  
12 reproduction and distribution of each of Plaintiffs' Compositions embodied in the *Pink Album*  
13 without first obtaining mechanical licenses from Plaintiffs concerning the use and reproduction  
14 of said Compositions.

15 74. Defendants' failure to secure Plaintiffs permission regarding the use of the above  
16 Masters and Compositions violates Plaintiffs' rights inasmuch as Plaintiffs retain the exclusive  
17 right under the Copyright Act to authorize the adaptation, reproduction, performance and  
18 distribution of said Masters and Compositions.

19 75. Plaintiffs allege that Defendants Ferguson, Anthem Music and Bicycle Music  
20 engaged in each of the above acts willfully, and with full knowledge that they had no right to do  
21 so.

22 76. Except for the recordings (*We Are The One*, *Car Crash* and *I Believe in Me*) and  
23 the composition (*Paint It Black*) owned by third parties, Plaintiffs have complied with all  
24 statutory requirements and applied to secure federal statutory copyright for each of the Masters  
25 and Compositions embodied in the *Pink Album* under the copyright laws of the United States.  
As a direct and proximate result of Defendants' acts and omissions related herein, Plaintiffs have



suffered actual damages and Defendants have profited from the unauthorized use of Plaintiffs' works in violation of their Copyrights. The exact extent of actual damage suffered by Plaintiffs and profited by Defendants is as yet not ascertained, as the total nature and extent of all unauthorized uses of Plaintiff's works by Defendants is presently unknown. Plaintiffs pray leave to amend this Complaint to set forth additional unauthorized uses of their works by Defendants, and the exact nature of actual damages suffered and the gross revenues received by Defendants in connection with such unauthorized uses, in an amount according to proof at trial.

### THIRD CAUSE OF ACTION

#### Copyright Infringement

##### *I Believe in Me* (Composition)

##### (Defendants Ferguson, Anthem Music and Bicycle Music)

77. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 76 inclusive, and by this reference incorporate the same as though fully set forth herein.

78. On or about August 11, 1982 Plaintiffs Wilsey and O'Brien entered into the *Rat Music* License granting Go! Records the right to include the Master and Composition *Cheap Tragedies* on a compilation of west coast punk bands entitled *Rat Music For Rat People*.

79. At no time did Plaintiffs grant Go! Records or its successors and assigns the right to include any other Masters or Compositions on compilation albums featuring other bands.

80. Despite the limited scope of the *Rat Music* License, in approximately 2009 Defendants Ferguson, Anthem Music and/or Bicycle Music entered into agreements with IODA and other third parties permitting the reproduction and digital distribution of a compilation album entitled *Rat Music For Rat People. Vol. IV* containing the recording *I Believe in Me* (owned by Dangerhouse Records) via third party vendors of digital downloads and ringtones, including but not limited to, iTunes, Amazon.com, eMusic, Limewire, MySpace, 7Digital and others.

81. Plaintiffs retain exclusive rights in and to the Composition *I Believe In Me* based on their prior termination of the Houston Co-Publishing Agreement and Ingraham Co-Publishing

1 Agreement. and Defendants Ferguson. Anthem Music and/or Bicycle Music violated Plaintiffs'  
 2 exclusive rights by failing to obtain a mechanical license from Plaintiffs permitting the  
 3 reproduction of said Composition in the compilation album *Rat Music For Rat People. Vol. IV.*

4 82. Plaintiffs allege that Defendants Ferguson, Anthem Music and Bicycle Music  
 5 engaged in each of the above acts willfully, and with full knowledge that they had no right to do  
 6 so.

7 83. Plaintiffs have complied with all statutory requirements and applied to secure  
 8 federal statutory copyright for the Composition *I Believe in Me* under the copyright laws of the  
 9 United States. As a direct and proximate result of Defendants' acts and omissions related herein,  
 10 Plaintiffs have suffered actual damages and Defendants have profited from the unauthorized use  
 11 of Plaintiffs' works in violation of their Copyright. The exact extent of actual damage suffered  
 12 by Plaintiffs and profited by Defendants is as yet not ascertained, as the total nature and extent of  
 13 all unauthorized uses of Plaintiff's works by Defendants is presently unknown. Plaintiffs pray  
 14 leave to amend this Complaint to set forth additional unauthorized uses of their works by  
 15 Defendants, and the exact nature of actual damages suffered and the gross revenues received by  
 16 Defendants in connection with such unauthorized uses. in an amount according to proof at trial.

#### 17 **FOURTH CAUSE OF ACTION**

##### 18 **Copyright Infringement**

##### 19 ***Tribute to the Avengers* Album**

##### 20 **(Defendants Ferguson, Anthem Music and Bicycle Music)**

21 84. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1  
 22 through 83 inclusive, and by this reference incorporate the same as though fully set forth herein.

23 85. In approximately 2009 Defendants Ferguson. Anthem Music and/or Bicycle  
 24 Music entered into agreements with IODA and other third parties permitting the reproduction  
 25 and digital distribution of a compilation album entitled *Tribute to the Avengers* via third party

1 vendors of digital downloads and ringtones, including but not limited to, iTunes, Amazon.com,  
2 eMusic, Limewire, MySpace, 7Digital and others.

3 86. Plaintiffs retain exclusive rights in and to the Compositions embodied on the  
4 *Tribute to the Avengers* album based on their prior termination of the Houston Co-Publishing  
5 Agreement and Ingraham Co-Publishing Agreement, and Defendants Ferguson, Anthem Music  
6 and/or Bicycle Music violated Plaintiffs' exclusive rights by failing to obtain a mechanical  
7 license from Plaintiffs permitting the reproduction of said Compositions (including *Uh Oh*, *Think*  
8 *White Line*, *Cheap Tragedies*, *We Are The One*, *Desperation*, *Corpus Christi*, *Open Your Eyes*,  
9 *American in Me*, *Second to None*, *No Martyr*, *Car Crash* and *F\*\*k You*) in the *Tribute to the*  
10 *Avengers* album.

11 87. Defendants' failure to secure Plaintiffs permission regarding the use of the above  
12 Compositions violates Plaintiffs' rights inasmuch as Plaintiffs retain the exclusive right under the  
13 Copyright Act to authorize the adaptation, reproduction, performance and distribution of said  
14 Compositions.

15 88. Plaintiffs allege that Defendants Ferguson, Anthem Music and Bicycle Music  
16 engaged in each of the above acts willfully, and with full knowledge that they had no right to do  
17 so.

18 89. Plaintiffs have complied with all statutory requirements and applied to secure  
19 federal statutory copyright for the and Compositions embodied in the *Tribute to the Avengers*  
20 Album under the copyright laws of the United States. As a direct and proximate result of  
21 Defendants' acts and omissions related herein, Plaintiffs have suffered actual damages and  
22 Defendants have profited from the unauthorized use of Plaintiffs' works in violation of their  
23 Copyrights. The exact extent of actual damage suffered by Plaintiffs and profited by Defendants  
24 is as yet not ascertained, as the total nature and extent of all unauthorized uses of Plaintiff's  
25 works by Defendants is presently unknown. Plaintiffs pray leave to amend this Complaint to set  
forth additional unauthorized uses of their works by Defendants, and the exact nature of actual

1 damages suffered and the gross revenues received by Defendants in connection with such  
2 unauthorized uses, in an amount according to proof at trial.

3 **FIFTH CAUSE OF ACTION**

4 **Copyright Infringement**

5 ***We Are The One* (Composition)**

6 **(Defendant Ferguson)**

7 90. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1  
8 through 89 inclusive, and by this reference incorporate the same as though fully set forth herein.

9 91. Plaintiffs allege on information and belief that in or about 2008 Dangerhouse  
10 Records, owner of the recording *We Are The One* entered into an agreement permitting the use of  
11 said recording in the independent motion picture "What We Do Is Secret" (the "Film") and  
12 accompanying soundtrack album.

13 92. Plaintiffs further allege on information and belief that in or about 2008 Defendant  
14 Ferguson also entered into an agreement with the licensing company Music Rightz permitting use  
15 of Plaintiffs' Composition *We Are The One* in the Film and accompanying soundtrack album.

16 93. Defendant Ferguson lacked the right to authorize use of the Composition *We Are*  
17 *The One* as part of the Film and soundtrack album based on Plaintiffs' prior termination of the  
18 Houston Co-Publishing Agreement and Ingraham Co-Publishing Agreement in August 1999.

19 94. Plaintiffs allege that Defendant Ferguson engaged in each of the above acts  
20 willfully, and with full knowledge that they had no right to do so.

21 95. Plaintiffs have complied with all statutory requirements and applied to secure  
22 federal statutory copyright for the Composition *We Are The One* under the copyright laws of the  
23 United States. As a direct and proximate result of Defendants' acts and omissions related herein,  
24 Plaintiffs have suffered actual damages and Defendants have profited from the unauthorized use  
25 of Plaintiffs' works in violation of their Copyright. The exact extent of actual damage suffered  
by Plaintiffs and profited by Defendants is as yet not ascertained, as the total nature and extent of

1 all unauthorized uses of Plaintiff's works by Defendants is presently unknown. Plaintiffs pray  
2 leave to amend this Complaint to set forth additional unauthorized uses of their works by  
3 Defendants, and the exact nature of actual damages suffered and the gross revenues received by  
4 Defendants in connection with such unauthorized uses, in an amount according to proof at trial.

#### 5 SIXTH CAUSE OF ACTION

##### 6 Declaratory Judgment – *Pink Album* License Agreements

##### 7 (Defendant Ferguson, Anthem Music and Bicycle Music)

8 96. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1  
9 through 95 inclusive, and by this reference incorporate the same as though fully set forth herein.

10 97. Plaintiffs contend that the License Agreements for the *Pink Album* were non-  
11 exclusive "at will" licenses permitting duplication of the Masters only in the form of  
12 Phonorecords, and that those respective licenses were terminated in August 5, 1999 by letter to  
13 Ferguson's legal counsel.

14 98. Defendant Ferguson alternately contends that Plaintiffs never terminated the  
15 License Agreements, and that he retains exclusive rights in the Masters under the License  
16 Agreements, including the right to license said Masters for film and other uses.

17 99. Accordingly, pursuant to 17 U.S.C. Sections 101 *et seq.* and 28 U.S.C. Section  
18 2201, Plaintiffs seek a declaratory judgment as to whether Defendant Ferguson retains the right  
19 to exploit the *Pink Album* Masters pursuant to Plaintiffs' License Agreements, or whether those  
20 License Agreements were effectively terminated in August 1999. Based on their ownership of  
21 the Masters, Plaintiffs additionally seek declaratory relief in the form of a judgment providing  
22 that any and all assignments, transfers and licenses of the Masters by Ferguson or his agents and  
23 assigns are null and void.

24 ///

25 ///

SEVENTH CAUSE OF ACTION

Declaratory Judgment – Houston/Ingraham Co-Publishing Agreements

(Defendant Ferguson, Anthem Music and Bicycle Music)

100. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 99 inclusive, and by this reference incorporate the same as though fully set forth herein.

101. A dispute exists as to whether Defendant Ferguson ever acquired the right to exploit the Compositions and collect income from the Compositions on behalf of Plaintiffs Wilsey and O'Brien.

102. Plaintiffs Wilsey and O'Brien contend they never signed any publishing or administration agreement with Ferguson and that said Defendant lacks any rights to administer or publish their respective copyright interests in the Compositions. Defendant Ferguson alternately contends that the Houston and Ingraham Co-Publishing Agreements were sufficient to transfer Wilsey's and O'Brien's respective copyright interests in the Compositions to him and his various companies.

103. A dispute has also arisen in that Plaintiffs contend that the Houston Co-Publishing Agreement and Ingraham Co-Publishing Agreement were rescinded in August 1999, whereas Defendant Ferguson alleges that any attempts by Plaintiffs to rescind the Co-Publishing Agreements were ineffective.

104. Accordingly, pursuant to 17 U.S.C. Sections 101 *et seq.* and 28 U.S.C. Section 2201, Plaintiffs, and each of them, seek a declaratory judgment as to whether they are bound by the terms of the Houston Co-Publishing Agreement dated March 5, 1984 and the Ingraham Co-Publishing Agreement dated March 21, 1984. Based on their ownership of the Composition, Plaintiffs additionally seek declaratory relief in the form of a judgment providing that any and all assignments, transfers and licenses as to the Compositions by Ferguson and his agents and assigns are null and void.



## EIGHTH CAUSE OF ACTION

### Declaratory Judgment – *Live at Winterland Masters*

#### (Defendant Ferguson, Anthem Music and Bicycle Music)

105. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 104 inclusive, and by this reference incorporate the same as though fully set forth herein.

106. On or about January 14, 1978, Plaintiffs' band The Avengers performed at Winterland Auditorium opening for the Sex Pistols. At the concert The Avengers performed numerous compositions identified herein, including: *The American in Me*, *Desperation*, *Open Your Eyes*, *No Martyr*, *Teenage Rebel*, *We Are The One*, *I Believe In Me* and *Car Crash* in addition to *Friends of Mine*, *Crazy Homicide*, *The End of the World* and *Summer of Hate* and a cover version of the Rolling Stones song *Paint It Black*.

107. The Sex Pistols final performance at Winterland Auditorium in 1978 was an historic event and the entire concert was recorded and videotaped by several entities, including the radio station KSAN, Target Video and Bill Graham Presents, the concert's producer.

108. All copyright in and to sound recordings of The Avengers' live performance at Winterland created by Bill Graham Presents (the "Winterland Masters") continue to be owned by Plaintiffs, and registration of said Winterland Masters by Plaintiffs is pending with the United States Copyright Office pursuant to Registration Application No. SR 1-374330742 submitted to the Register of Copyrights on or about April 14, 2010. Said Master constitutes copyrightable subject matter under the laws of the United States.

109. In consideration for settlement of a 1993 lawsuit commenced by Buried Treasure, Inc. against Frontier Records (see Paragraph 41 *supra*) Plaintiff Houston on or about October 8, 1997 granted Ferguson her interest in a recording of The Avengers' 1978 Winterland performance that was recorded at that event by Ferguson (the "Winterland Agreement"). Pursuant to the Winterland Agreement, Ferguson agreed to pay Houston a royalty of six percent

1 (6%) of the actual retail price for sales of said recording, with accounting statements and  
2 royalties to be provided on a semi-annual basis.

3 110. At no time did Plaintiffs Ingraham, Wilsey nor O'Brien enter into any agreements  
4 with Ferguson concerning their respective rights in the Winterland performance. nor did said  
5 Plaintiffs authorize Houston to enter into any agreements on their behalf with respect to any  
6 recordings of their Winterland performance. Because any transfer of copyright interest, other  
7 than one by operation of law, is not valid unless set forth in an instrument of conveyance signed  
8 by the owner of the rights conveyed or their duly authorized agent pursuant to 17 U.S.C. Section  
9 204(a), said Plaintiffs have at all relevant times retained 100% of their respective ownership  
10 interests in and to the *Live at Winterland Masters*.

11 111. Pursuant to the Winterland Agreement, in approximately 2009 Ferguson, Anthem  
12 Music and/or Bicycle Music entered into agreements with IODA and other companies  
13 concerning the digital distribution of a *Live at Winterland* album via digital music retailers,  
14 including but not limited to, iTunes, Amazon.com, eMusic, Limewire, MySpace, 7Digital and  
15 others. A true and correct copy of internet printouts documenting the unauthorized distribution  
16 of the *Live at Winterland* album is attached hereto as **Exhibit P** and incorporated herein by this  
17 reference.

18 112. A dispute has arisen in that Plaintiffs contend Ferguson acquired only Plaintiff  
19 Houston's twenty-five percent (25%) interest in the Winterland Masters and that Plaintiffs  
20 Ingraham, Wilsey and O'Brien retain their seventy-five percent (75%) interest in the Winterland  
21 Masters, whereas Defendant Ferguson contends that he acquired one-hundred percent (100%) of  
22 all rights (including copyright) in and to the Winterland Masters pursuant to the Winterland  
23 Agreement.

24 113. A dispute has also arisen in that Plaintiffs contend that the Winterland Agreement  
25 signed by Houston is expressly limited to *recordings made by Ferguson* at the January 1978  
Winterland concert, whereas Plaintiffs allege the *Live At Winterland* album released by Ferguson

1 consists of the audio track taken from a video recording of that event created by the concert's  
2 promoter. Bill Graham Presents. Defendant Ferguson alternately contends that the Winterland  
3 Agreement permits him to release any third party recording of The Avengers performance at  
4 Winterland, regardless of who created it and without the need for any additional permissions.

5 114. Accordingly, pursuant to 17 U.S.C. Sections 101 *et seq.* and 28 U.S.C. Section  
6 2201, Plaintiffs seek a declaratory judgment that a) the Winterland Agreement is limited in scope  
7 to recordings *created by Ferguson* at the January 1978 Winterland concert, and b) that any grant  
8 of rights to Ferguson in said master recordings is limited to Plaintiff Houston's 25% interest,  
9 with Plaintiffs Ingraham, Wilsey and O'Brien retaining their 75% copyright interest in the *Live*  
10 *at Winterland Masters*.

#### 11 NINTH CAUSE OF ACTION

#### 12 Breach of *Pink Album* License Agreements

#### 13 (Defendant Ferguson only)

14 115. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1  
15 through 114 inclusive, and by this reference incorporate the same as though fully set forth herein.

16 116. Paragraph 3 of each *Pink Album* License signed by Plaintiffs states that Plaintiffs  
17 shall receive six (6%) of the retail price for ninety-percent (90%) of all phonorecords  
18 manufactured, sold and non-returnable, and Paragraph 5 states that such royalty payments shall  
19 be paid within ninety (90) days after the conclusion of each semi-annual accounting period.

20 117. To the extent Plaintiffs' August 1999 termination of their respective *Pink Album*  
21 Licenses are deemed ineffective (which Plaintiffs deny). Plaintiffs allege that Defendant  
22 Ferguson is in breach thereof by failing to pay, and thereby appropriating for his own use,  
23 royalties and other income owed to Plaintiffs under said agreements, by failing to provide  
24 Plaintiffs with accounting statements (and accrued royalties) throughout the term of the License  
25 Agreements, by remixing and remastering the Masters without Plaintiffs' approval, and by  
licensing the Masters to third parties for non-Phonorecord uses, including licensing the Master

1 *The American In Me* for use in an episode of the NBC-Universal television program "Trauma"  
2 entitled *All's Fair*.

3 118. Plaintiffs have performed all conditions, covenants, and promises required to be  
4 performed by them in accordance with the terms and conditions of their respective License  
5 Agreements.

6 119. As a direct and approximate result of Defendant Ferguson's breach of the License  
7 Agreements, Plaintiffs have been damaged in an unknown amount, to be established according to  
8 proof at trial.

9 **TENTH CAUSE OF ACTION**

10 **Breach of Producer Agreement**

11 **(Defendant Ferguson only)**

12 120. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1  
13 through 119 inclusive, and by this reference incorporate the same as though fully set forth herein.

14 121. The Producer Agreement for the *Pink Album* provides that Plaintiff Wilsey is to  
15 receive an additional royalty of one (1%) of the retail price for ninety-percent (90%) of all  
16 phonorecords manufactured, sold and non-returnable, and that such royalty payments shall be  
17 paid semi-annually.

18 122. To the extent the Producer Agreements is deemed valid and binding, Plaintiff  
19 Wilsey alleges that Defendant Ferguson has breached the Producer Agreement by failing to pay,  
20 and thereby appropriating for his own use, any income owed under said agreements and by  
21 failing to provide accounting statements (and accrued royalties) throughout the term of the  
22 Producer Agreement.

23 123. Plaintiff Wilsey has performed all conditions, covenants, and promises required to  
24 be performed by them in accordance with the terms and conditions of the Producer Agreement.  
25

1           124. As a direct and approximate result of Defendant Ferguson's breach of the  
2 Producer Agreement, Plaintiffs Wilsey has been damaged in an unknown amount, to be  
3 established according to proof at trial.

4                                   **ELEVENTH CAUSE OF ACTION**

5                                   **Breach of *Rat Music* License**

6                                   **(Defendant Ferguson only)**

7           125. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1  
8 through 124 inclusive, and by this reference incorporate the same as though fully set forth herein.

9           126. Paragraph 3 of the *Rat Music* License provides that Plaintiffs are to receive one  
10 percent (1%) of the retail price for ninety percent (90%) of all phonorecords manufactured, sold  
11 and non-returnable, and Paragraph 4 states that royalty payments shall be paid to the writers  
12 within ninety (90) days after the conclusion of each semi-annual accounting period.

13           127. Plaintiffs allege that Defendant Ferguson has breached said agreement by failing  
14 to pay, and thereby appropriating for his own use, income owed to Plaintiffs under said *Rat*  
15 *Music* License, by failing to provide Plaintiffs with any accounting or royalties accrued during  
16 the term of the *Rat Music* License, by remixing and remastering the *Cheap Tragedies* Master for  
17 release on the *Rat Music For Rat People Vol. 1* digital compilation without Plaintiffs' approval,  
18 and by Defendants' unauthorized inclusion of the Master and Composition *I Believe in Me* in  
19 connection with a separate compilation album entitled *Rat Music For Rat People, Vol. IV*.

20           128. Plaintiffs have performed all conditions, covenants, and promises required to be  
21 performed by them in accordance with the terms and conditions of the *Rat Music* License.

22           129. As a direct and approximate result of Defendant Ferguson's breach of the *Rat*  
23 *Music* License, Plaintiffs have been damaged in an unknown amount, to be established according  
24 to proof at trial.

25           ///

**TWELFTH CAUSE OF ACTION**

**Breach of Houston Co-Publishing Agreement**

**(Plaintiff Houston, as to Defendant Ferguson only)**

130. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 129 inclusive, and by this reference incorporate the same as though fully set forth herein.

131. In 1985, Plaintiff Houston entered into a Co-Publishing Agreement with Ferguson's company CD Presents, Ltd.

132. Paragraph 5 of the Houston Co-Publishing Agreement provides that Plaintiff Houston shall receive fifty-percent (50%) of all income collected as a result of said agreement, and Paragraph 7 states that royalty payments shall be paid to Houston within ninety (90) days after the conclusion of each semi-annual accounting period.

133. To the extent the Houston Co-Publishing Agreement is deemed valid and binding despite Plaintiff's August 1999 termination thereof, Plaintiffs allege that Defendant Ferguson is in breach of the Co-Publishing Agreement by failing to provide accounting statements and by failing to pay, and thereby appropriating for his own use, any income owed thereunder since at least 1985.

134. Plaintiff has performed all conditions, covenants, and promises required to be performed by her in accordance with the terms and conditions of said Co-Publishing Agreement.

135. As a direct and approximate result of Defendant Ferguson's breach of the Houston Co-Publishing Agreement, said Plaintiff has been damaged in an unknown amount, to be established according to proof at trial.

**THIRTEENTH CAUSE OF ACTION**

**Breach of Ingraham Co-Publishing Agreement**

**(Plaintiff Ingraham as to Defendant Ferguson only)**

136. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 135 inclusive, and by this reference incorporate the same as though fully set forth herein.



1           137. In 1985, Plaintiff Ingraham entered into a Co-Publishing Agreement with  
2 Ferguson's company CD Presents, Ltd.

3           138. Paragraph 5 of the Ingraham Co-Publishing Agreement provides that Ingraham  
4 shall receive fifty-percent (50%) of all income collected as a result of said agreement, and  
5 Paragraph 7 states that royalty payments shall be paid to Ingraham within ninety (90) days after  
6 the conclusion of each semi-annual accounting period.

7           139. To the extent the Ingraham Co-Publishing Agreement is deemed valid and  
8 binding despite Plaintiff's August 1999 termination thereof, Plaintiffs allege that Defendant  
9 Ferguson is in breach of the Co-Publishing Agreement by failing to provide accounting  
10 statements and by failing to pay, and thereby appropriating for his own use, any income owed  
11 thereunder since at least 1985.

12           140. Plaintiff has performed all conditions, covenants, and promises required to be  
13 performed by him in accordance with the terms and conditions of said Co-Publishing Agreement.

14           141. As a direct and approximate result of Defendant Ferguson's breach of the  
15 Ingraham Co-Publishing Agreement, said Plaintiff has been damaged in an unknown amount, to  
16 be established according to proof at trial.

17                           **FOURTEENTH CAUSE OF ACTION**

18                           **Breach of Covenant of Good Faith and Fair Dealing**

19                           **(Defendant Ferguson only)**

20           142. Plaintiffs reallege and incorporate by reference the allegations contained in  
21 paragraphs 1 through 141 herein.

22           143. At all relevant times and for each separate agreement identified herein, Defendant  
23 Ferguson owed to Plaintiffs the implied covenant to conduct his business affairs with respect to  
24 Plaintiffs' in a fair and ethical manner and in a manner that was not designed or intended to be in  
25 bad faith or in contravention of Plaintiffs' rights under their respective agreements, including

1 without limitation the various *Pink Album* Licenses, the Producer Agreement, the Houston Co-  
2 Publishing Agreement, the Ingraham Co-Publishing Agreement and the *Rat Music* License.

3 144. Plaintiffs each placed confidence in and relied on Ferguson that he would act in  
4 good faith in his dealings with Plaintiffs.

5 145. Defendant Ferguson breached the covenant of good faith and fair dealing implied  
6 in each separate agreement with Plaintiffs by doing the acts and/or failing to act as described  
7 herein, including but not limited to, by failing to provide accounting statements to Plaintiffs, by  
8 failing to pay, and thereby appropriating for his own use, any income owed under said  
9 agreements, by failing to register the Compositions with applicable performance rights societies,  
10 and by engaging in acts of fraud against Plaintiff Wilsey, Plaintiff O'Brien and the Copyright  
11 Office with respect to the registration of certain Compositions as set forth hereinbelow.

12 146. As a direct and approximate result of the acts and omissions of Ferguson,  
13 Plaintiffs have been damaged in an amount to be established according to proof at trial.

14 147. The actions and omissions of Ferguson were willful, malicious and oppressive  
15 and designed and intended to cause harm to Plaintiffs and by reason thereof, Plaintiffs are  
16 entitled to an award of exemplary or punitive damages in an amount deemed necessary by this  
17 court to punish and deter such actions in the future.

## 18 FIFTEENTH CAUSE OF ACTION

### 19 Fraud

#### 20 (Defendant Ferguson only)

21 148. Plaintiffs reallege and incorporate by reference the allegations contained in  
22 paragraphs 1 through 147 herein.

23 149. At all relevant times, Ferguson has falsely represented to BMI, Anthem Music,  
24 Bicycle Music, Film 44, NBC-Universal, IODA and other third parties that he retains the right to  
25 exclusively administer music publishing rights, and collect music publishing income, on behalf

1 of Plaintiffs Houston, Ingraham, Wilsey and O'Brien, in willful disregard of their individual  
2 rights as co-authors and joint copyright owners of the Compositions.

3 150. The above representations were made by Ferguson with the intent of deceiving  
4 third parties into believing that said Defendant retains the right to administer Plaintiff Wilsey and  
5 Plaintiff's O'Brien's copyright interest in the Compositions despite the lack of any agreement  
6 with said Plaintiffs, and with the intent of retaining Plaintiff Wilsey's and Plaintiff O'Brien's  
7 respective shares of publishing income in the Compositions for himself.

8 151. The above representations were also made by Ferguson with the intent of  
9 deceiving third parties into believing that said Defendant retains exclusive publishing rights in  
10 the Compositions despite the August 1999 termination of the Houston Co-Publishing Agreement  
11 and Ingraham Co-Publishing Agreement by said Plaintiffs, and with the intent to retain said  
12 Plaintiffs' share of publishing income in the Compositions for himself.

13 152. In furtherance of the above, Ferguson has knowingly and intentionally engaged in  
14 acts intended to deceive third parties into believing Plaintiffs do not own rights in and to their  
15 Compositions or that said Plaintiffs are not otherwise entitled to receive income earned from the  
16 exploitation of their Compositions, including without limitation a) making false representations  
17 to Bicycle Music and other third parties regarding his right to administer Plaintiffs' copyright  
18 interests in the Compositions, b) the filing of false registration certificates with the Copyright  
19 Office that intentionally omit any reference to Wilsey's and O'Brien's co-authorship and co-  
20 ownership of the Compositions *We Are The One*, *Car Crash* and *I Believe in Me*, c) the filing of  
21 false recordation documents with the Copyright Office which purport to transfer to Ferguson  
22 Plaintiff Wilsey's and Plaintiff O'Brien's respective copyright interest in the White Noise EP  
23 Compositions; and d) the false filing of copyright registration certificates that purport to reflect a  
24 transfer of copyright interest in and to certain sound recordings, including the Master *The*  
25 *American In Me*. True and correct copies of Registration Certificate No. PA 551 821 (*We Are*  
*The One*); PA 582-691 (*I Believe In Me*) and PA 582-692 (*Car Crash*) submitted by Ferguson

1 which falsely identify Plaintiffs Houston and Ingraham as sole authors of *We Are The One, Car*  
 2 *Crash* and *I Believe In Me* are attached hereto as **Exhibit Q** and incorporated herein by this  
 3 reference. A true and correct copy of the "Certificate of Recordation" filed by Ferguson which  
 4 falsely reflects a transfer of Plaintiff Wilsey's and Plaintiff O'Brien's copyright interest in the  
 5 Compositions to Ferguson is attached hereto as **Exhibit R** and incorporated herein by this  
 6 reference. A true and correct copy of Registration Certificate No. SR 137 683 (*The Amerikan In*  
 7 *Me* (sic)) submitted by Defendant Ferguson which falsely identifies Houston and Ingraham as  
 8 sole authors of the Master and purports to reflect a "Transfer of all authors' rights by written  
 9 contract" is attached hereto as **Exhibit S** and incorporated herein by this reference.

10 153. When Ferguson made each of the above representations, he knew them to be  
 11 false, and these representations were made by Defendant with the intent to defraud and deceive  
 12 Plaintiffs.

13 154. As a proximate results of Ferguson's fraud and the facts alleged in this Complaint,  
 14 Ferguson was unjustly enriched and Plaintiffs were unjustly deprived of publishing income they  
 15 are rightfully entitled to as co-authors and co-owners of the Compositions.

16 155. In doing the acts alleged herein, Defendant acted with oppression, fraud and  
 17 malice, and Plaintiffs are therefore entitled to punitive damages in an amount according to proof.

## 18 SIXTEENTH CAUSE OF ACTION

### 19 Fraudulent Inducement of Contract

#### 20 (Defendant Ferguson only)

21 156. Plaintiffs reallege and incorporate by reference the allegations contained in  
 22 paragraphs 1 through 155 herein.

23 157. By entering into the license agreements with Plaintiffs (including the *Pink Album*  
 24 Licenses and *Rat Music* License) and the Producer Agreement with Wilsey, Ferguson promised  
 25 that he would commercially release only certain Masters specifically identified in those  
 agreements, that he would exploit those Masters only in form of Phonorecords, that he would not

1 alter the Masters without Plaintiffs' prior consent, that he would provide semi-annual accounting  
2 statements to Plaintiffs and that he would make payment of accrued royalties to Plaintiffs on a  
3 semi-annual basis.

4 158. By entering into the Producer Agreement with Plaintiff Wilsey, Ferguson further  
5 promised that he would provide semi-annual accounting statements and make payment of  
6 accrued royalties to Plaintiff.

7 159. By entering into separate Co-Publishing Agreements with Plaintiff Houston and  
8 Plaintiff Ingraham, Ferguson further promised that he would administer their respective rights in  
9 and to the compositions (including without limitation, register said compositions with the  
10 Copyright Office and applicable performing rights societies such as BMI or ASCAP) and  
11 distribute fifty percent (50%) of gross income earned from the exploitation of said Compositions  
12 to said Plaintiffs.

13 160. By entering into the Winterland Agreement with Plaintiff Houston, Defendant  
14 Ferguson further promised that he would commercially release only those recordings that he  
15 himself had previously made of the Avengers' January 1978 performance at Winterland  
16 Auditorium.

17 161. At the time Ferguson made the above promises to Plaintiffs, he had no intention  
18 of performing those promises.

19 162. When Ferguson made these representations, he knew them to be false, and these  
20 representations were made with the intent to defraud and deceive Plaintiffs and with the intent to  
21 induce Plaintiffs to rely on Defendant's representations in the manner herein alleged.

22 163. Plaintiffs, at the time these representations were made by Ferguson, were ignorant  
23 of the falsity of his representations and believed them to be true.

24 164. As a proximate results of Ferguson's fraud and the facts alleged in this Complaint,  
25 Plaintiffs were misled into believing that Ferguson would abide by the terms of said agreements,  
including without limitation, delivery of accounting statements and payment of royalties on a

1 semi-annual basis, releasing Masters in the form of Phonorecords only and obtaining consent  
2 prior to making alterations to their recorded legacy, and by reason of which Plaintiffs have been  
3 damaged in an amount to be established according to proof at trial.

4 165. In doing the acts alleged herein, Defendant acted with oppression, fraud and  
5 malice, and Plaintiffs are therefore entitled to punitive damages in an amount according to proof.

## 6 SEVENTEENTH CAUSE OF ACTION

### 7 Conversion

#### 8 (Defendants Ferguson, Anthem Music and Bicycle Music)

9 166. Plaintiffs reallege and incorporate by reference the allegations contained in  
10 paragraphs 1 through 165 herein.

11 167. At all times herein mentioned, Plaintiffs were, and still are, entitled to their  
12 respective shares of income from exploitation of their Masters and Compositions.

13 168. At all times herein mentioned, Defendants Ferguson, Anthem Music and Bicycle  
14 Music appropriated Plaintiffs profits derived from the exploitation of their Masters and  
15 Compositions and converted the same to their own use.

16 169. On or about February 10, 2008, December 10, 2008 and October 21, 2009,  
17 Plaintiffs demanded immediate return of their property but Defendants continue to wrongfully  
18 hold Plaintiffs' money.

19 170. As a direct and proximate result of said Defendants' conversion, Plaintiffs have  
20 incurred and will incur damages in an amount to be established according to proof at trial.

21 171. The aforementioned acts of Defendant Ferguson were willful, wanton,  
22 malicious, and oppressive, were undertaken with the intent to defraud, and justify the  
23 awarding of exemplary and punitive damages in an amount according to proof.

24 ///



**EIGHTEENTH CAUSE OF ACTION**

**Request for Accounting**

**(Defendants Ferguson, Anthem Music and Bicycle Music)**

172. Plaintiffs repeat and reallege each of the allegations set forth in Paragraphs 1 through 171 inclusive, and by this reference incorporates the same as though fully set forth herein

173. As a result of the infringement and other wrongful acts of Defendants Ferguson, Anthem Music and Bicycle Music, Plaintiffs allege they are entitled to an accounting from said Defendants as to those amounts derived from their unauthorized exploitation of Plaintiffs' Masters and Compositions, so that Plaintiffs may determine the revenues and profits rightfully belonging to them and wrongfully earned by said Defendants.

**NINETEENTH CAUSE OF ACTION**

**Request for Constructive Trust**

**(Defendants Ferguson, Anthem Music and Bicycle Music)**

174. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 173 herein.

175. By reason of the fraudulent and otherwise wrongful manner in which Defendants have acted, said Defendants, and each of them, have no legal or equitable right, claim or interest in or to the Masters (including Plaintiffs' original multi-track recordings of same) and Compositions. Instead, Defendants are involuntary trustees holding said property and profits therefrom in constructive trust for Plaintiffs with the duty to convey the same to Plaintiffs forthwith.

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**TWENTIETH CAUSE OF ACTION**

**Injunctive Relief**

**(All Defendants)**

176. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 175 herein.

177. Defendants' ongoing exploitation of Plaintiffs' copyrights in the Masters and Compositions without permission, their withholding of revenues from Plaintiffs with no prospect of recovery and their fraudulent acts have caused, and will continue to cause, Plaintiffs irreparable harm for which there is no adequate remedy at law, thereby justifying the issuance of a preliminary injunction and permanent injunction to enjoin and restrain such conduct.

**WHEREFORE**, Plaintiff prays judgment against each of the Defendants identified above, as follows:

1. That this Court grant a permanent injunction forever enjoining Defendants, Defendants' servants, and agents, and anyone acting on behalf of Defendants, from directly or indirectly using Plaintiff's Masters and Compositions or any other work based upon the Masters and Compositions in any manner which infringes upon Plaintiffs' copyrights.

2. Direct Defendants, and each of them, to file with the Court and serve on Plaintiffs a report setting forth the manner and form in which compliance with said permanent injunction against infringement has been made.

3. At the election of Plaintiffs, said election to be made at any time before entry of final judgment, as authorized by 17 U.S.C. §504, that Defendants, and each of them, be required to pay damages to Plaintiffs of either:

(a) Such actual damage as Plaintiffs have sustained as a consequence of Defendants' infringement of Plaintiffs' copyrights, together with any profits of Defendants that are attributable to said infringement and are not taken into account in computing said actual damages pursuant to 17 U.S.C. §504(b); or

1 (b) Statutory damages in the sum of one hundred and fifty thousand dollars  
2 (\$150,000.00) for each willful infringement by Defendants of Plaintiffs copyright in their  
3 Masters and Compositions, as authorized by 17 U.S.C. §504(c)(2).

4 4. That Defendants, and each of them, be ordered to return to Plaintiffs all original  
5 multi-track tapes, two-track masters and other physical media embodying Plaintiffs' audio or  
6 audio-visual performances:

7 5. That Defendants, and each of them, be ordered to render an accounting to  
8 Plaintiffs of the gross receipts obtained from their exploitation of the Masters and Compositions  
9 and other derivatives based thereon, in which Plaintiff's Masters and Compositions were  
10 commercially utilized, through the date that each Defendant ceases their infringing use.

11 6. That this Court issue a declaration that all agreements between Plaintiffs and  
12 Defendants are rescinded and/or terminated, and that Plaintiffs retain the sole and exclusive right  
13 to administer and collect all income and payments attributable to their recordings and musical  
14 compositions, including the Masters and Compositions set forth herein.

15 7. That Plaintiffs be awarded their actual damages, with such monetary award  
16 trebled.

17 8. That Plaintiffs be awarded punitive damages in an amount according to proof.

18 9. That the Court impose a constructive trust upon such sums by which it may be  
19 found Defendants have been unjustly enriched, and for such other forms of equitable and legal  
20 relief as may be reasonable including but not limited to declaratory judgment and findings in  
21 favor of Plaintiff.

22 10. That Plaintiffs be awarded pre-judgment and post-judgment interest at the legal  
23 rate on each sum not timely paid to them;

24 11. That Defendants be ordered to reimburse Plaintiffs their attorneys' fees and  
25 reasonable costs incurred in connection with the aforementioned action; and

1 11. For such other and further relief as the Court deems just and appropriate in the  
2 premises.

3 **JURY DEMAND**

4 Plaintiff respectfully demands a jury trial of all issues in this case.

5 Dated: April 30, 2010

LAW OFFICE OF ALAN KORN

7 By:

8 ALAN KORN

9 Attorneys for Plaintiffs,  
10 Penelope Houston, Greg Ingraham  
11 James Wilsey and Daniel O'Brien  
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